

Decision 04-11-004 November 9, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of T-NETIX
Telecommunications Services, Inc. (U-5324-C)
and H.I.G. Capital Partners III, LP for approval of
acquisition by H.I.G. Capital Partners III, LP of
indirect control over T-NETIX
Telecommunications Services, Inc.

Application 04-08-002
(Filed August 3, 2004)

OPINION APPROVING ACQUISITION OF INDIRECT CONTROL

Summary

T-NETIX Telecommunications Services, Inc. (TTS) and H.I.G. Capital Partners III, LP (H.I.G.) jointly seek approval of H.I.G.'s acquisition of indirect control over TTS in accordance with the Agreement and Plan of Merger submitted. Applicants initially sought and received approval of the transaction through the Commission's advice letter process, and have filed this application because of uncertainty regarding the effectiveness of the earlier advice letter filing. The acquisition is approved.

Jurisdiction

Applicants filed this matter pursuant to Public Utilities Code Section 854 and Rule 35 of the Commission's Rules of Practice and Procedure. Section 854 precludes any person or corporation from transferring direct or indirect control of any public utility organized and doing business in California without first securing authorization to do so from this Commission upon a finding that the

transfer is in the public interest. The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action as the public interest may require. (*San Jose Water Co.* 10 California Railroad Commission 56 (1916).)

Description of the Parties and Transaction

TTS, formerly known as Gateway Technologies, Inc., is authorized to operate as a nondominant reseller of interLATA and intraLATA interexchange services in California pursuant to Decision (D.) 92-04-008 and D.93-05-032. The Company lists Carrollton, Texas as its principal place of business. Amended articles changing its name were filed with the Commission by Advice Letter No. 2, dated March 14, 2001.

H.I.G., a Delaware limited partnership founded in 1993, holds investments in a number of businesses. Its limited partners include investment banks, financial institutions, pension funds, and endowments. H.I.G. is a private equity and venture capital investment firm with more than \$1 billion of equity capital under its management, and has provided growth capital to a number of early stage technology companies and other businesses.

On February 27, 2004, T-NETIX, Inc.¹, the parent company of TTS, filed Advice Letter No. 8 requesting approval of H.I.G.'s acquisition of indirect control over it and TTS, pursuant to the Commission's advice letter approval process in D.94-05-051. The Telecommunications Division accepted the advice letter, which

¹ At the Telecommunications Division's request, T-NETIX, Inc. sought and received voluntary revocation of its operating authority because it was duplicative of that held by TTS. Resolution T-16834 approved the revocation on May 6, 2004.

became effective April 4, 2004. Soon afterward, TTS, its parent, and H.I.G. became concerned about the validity of the approval received since H.I.G. was not already certified itself nor the parent of a certified utility at the time of the advice letter filing or the closing of the acquisition transaction. Out of caution, TTS and H.I.G. filed this application.

In accordance with the Agreement and Plan of Merger², one hundred percent of the stock of T-NETIX, Inc., the parent of TTS, was acquired by TZ Holdings, Inc. (TZ) through a merger between T-NETIX, Inc. and a direct subsidiary of TZ. That subsidiary was merged into T-NETIX, Inc. and no longer exists. Certain existing T-NETIX, Inc. shareholders acquired interests in TZ, but the majority interest in TZ is held by H.I.G.-TNETIX, Inc., which is controlled by H.I.G.³ No conveyance of any public utility property is involved in the transaction. The subject change of control is the result of H.I.G.'s indirect acquisition of a controlling amount of stock in T-NETIX, Inc.

H.I.G. asserts that it acquired control of TTS in contemplation of a partial recapitalization now taking place through the extension of a long-term credit facility by ING Capital LLC. Applicants maintain that this new financing will provide TTS and its affiliates with access to significant sources of capital to meet their operating needs and will help ensure that TTS has both the ability to

² TTS and H.I.G. appended copies of the Agreement and Plan of Merger as well as financial information covering T-NETIX, Inc. to the application as confidential Exhibits A and C, respectively. By Administrative Law Judge Ruling the documents were placed under seal.

³ Exhibit B, a copy of which is appended to this decision, shows the post-transaction ownership structure of TTS.

continue to provide services to its customers and to potentially enhance or expand its services.

Discussion

Where a company acquiring control of a certificated telecommunications carrier does not possess a certificate of public convenience and necessity (CPCN), the Commission applies the same requirements as to an applicant seeking a CPCN to exercise the type of authority held by the company being acquired: a minimum of \$100,000 in cash or cash equivalent, and technical expertise in telecommunications or a related business. Review of the documents⁴ submitted in support of H.I.G.'s financial qualifications indicate that it will have sufficient resources to meet Commission requirements. Applicants state that notwithstanding the closing of the acquisition transaction, the actual management of TTS has not changed and the transaction has been completely transparent to its customers. TTS and H.I.G. further declare that there are no definitive plans for any management changes at this point, and no plans for any changes in rates, terms, or conditions of service. Accordingly, H.I.G. through TTS meets the Commission's required technical and managerial qualifications.

It appears that no affiliate, officer, director, partner, or owner of more than 10% of H.I.G., or any person acting in that capacity, has filed for bankruptcy or been sanctioned by the Federal Communications Commission or any state regulatory commission for failure to comply with any regulatory statute, rule or

⁴ Specifically, the latest available audited consolidated financial statements and unaudited updated statements through March 31, 2004 of T-NETIX, Inc., and the financing commitment letter included in Confidential Exhibit C. Applicants declared that separate financial statements for TTS were not available.

order; and no such person has been found criminally or civilly liable for a violation of § 17000 et seq. of the California Business and Professions Code or for any actions that involved misrepresentations to consumers, or is currently under investigation for similar violations. Thus, applicants satisfy the Commission's requirements on these factors.

While TTS and H.I.G. erred initially in the specific process that needed to be followed in order to obtain the Commission's approval of this transaction, no entity or party seems to have been harmed or otherwise negatively affected by the error. Moreover, the Commission encourages such prompt self-correction as occurred in this instance. Given the strong financial commitment from ING that H.I.G. has arranged in connection with this transaction and H.I.G.'s interest as an investment manager in ensuring the continuing success of TTS' operations, it appears that the transaction has been and will be consistent with the public interest.

This application proposes no new construction. Accordingly, there is no possibility that the transaction described herein may have any significant impact on the environment. There are no protests to this application. Applicants' request is granted.

Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Applicants have requested expedited approval. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived. Pursuant to Pub. Util. Code

§§ 851-854, the Executive Director may grant noncontroversial applications by nondominant telecommunications carriers to transfer assets or control.⁵

Categorization and Need for Hearings

In Resolution ALJ 176-3137, dated August 19, 2004, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, the Commission concludes that a public hearing is not necessary; thus, the preliminary determinations in ALJ 176-3137 will not be altered.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Jacqueline A. Reed is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Resolution ALJ 176-3137 determined that this was a ratesetting proceeding and that hearings were not necessary.
2. Notice of this application appeared in the Commission's Daily Calendar on August 20, 2004.
3. No protests were filed.
4. On February 27, 2004, the parent company of TTS, filed for approval of H.I.G.'s acquisition of indirect control over it and TTS, pursuant to the Commission's advice letter approval process.
5. The Telecommunications Division accepted the advice letter, effective April 4, 2004.

⁵ *Re Crico Telecommunications of San Jose*, D.87-10-035, 1987 Cal. PUC LEXIS 283; *Re California Associations of Long Distance Telephone Companies*, D.86-08-057, 1986 Cal. PUC LEXIS 786.

6. Out of caution and concern about the validity of the approval received by uncertificated H.I.G., TTS and H.I.G. filed the instant application.

7. Applicants seek review under Sections 854 of the Code.

8. H.I.G. has sufficient financial resources to meet the Commission's requirements to operate as a nondominant reseller of interLATA and intraLATA interexchange services in the state.

9. Given joint applicants stated intention to retain the current managerial team of TTS, H.I.G. will possess the necessary technical expertise required by the Commission.

10. No new construction is being proposed in this application.

11. H.I.G. has no complaints (alleging fraud or significant wrongdoing) pending against it before this Commission, the FCC or any other state Commission.

Conclusions of Law

1. An uncertificated entity seeking indirect control of a public utility in California should do so pursuant to Pub. Util. Code § 854.

2. The Commission encourages prompt self-correction of filing errors.

3. The indirect transfer of control of TTS to H.I.G. is not adverse to the public interest.

4. This proceeding is designated as a ratesetting proceeding; no protests have been received; no hearing is necessary.

5. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.

6. H.I.G. meets the Commission's requirements for an acquiring company of authorized providers of local exchange and interexchange telecommunications services.

7. The application should be approved pursuant to Section 854(a) of the Pub. Util. Code; since the matter is uncontested, the decision should be effective on the date it is signed.

8. The application is noncontroversial and may be granted by the Executive Director pursuant to authority delegated by the Commission.

O R D E R

IT IS ORDERED that:

1. Pursuant to California Public Utilities Code Section 854(a), the indirect transfer of control of T-NETIX Telecommunications Services, Inc. to H.I.G. Capital Partners III, L.P., in accordance with the Agreement and Plan of Merger submitted in conjunction with Application (A.) 04-08-002, is authorized.

2. The Executive Director may grant noncontroversial applications by nondominant telecommunications carriers to transfer assets or control, pursuant to Pub. Util. Code §§ 851-854.

3. A.04-08-002 is closed.

This order is effective today.

Dated November 9, 2004, at San Francisco, California.

/s/ STEVE LARSON

STEVE LARSON
EXECUTIVE DIRECTOR